

## AGREEMENT

THIS AGREEMENT dated this 11th day of October, 2005, by and between LEON COUNTY, a charter county and a political subdivision of the State of Florida, hereinafter referred to as the "County" and Blankenship Contracting, Inc., hereinafter referred to as the "Contractor."

WHEREAS, the County has determined that it would be in the best interest of the citizens of Leon County, Florida, that the County be able to utilize the services of private persons when such services cannot be reasonably provided by the County; and

WHEREAS, the County has determined that it would be better to contract for these services than to hire the necessary personnel to satisfy the needs of the County; and

WHEREAS, in order to secure the lowest cost for these services, the County has sought and received competitive bids from contractor for such services.

NOW, THEREFORE, the parties hereto agree as follows:

### 1. SERVICES TO BE PROVIDED

The Contractor hereby agrees to perform the construction of a low pressure sanitary sewer system in Killearn Lakes Units 1 and 2 in Leon County, Florida. The collection system is generally composed of pipe mains with approximately 1,300 lateral connections. Construction of the system will be confined to the right of ways within Killearn Lakes Units 1 & 2 with directional boring to be utilized as the method of installation. The transmission system is generally composed of pipe interconnecting two master duplex lift stations and connecting to a 12" pressurized line at the intersection of Thomasville Road and Velda Dairy Road. A combination of horizontal directional drilling and open trench is proposed for the installation of the transmission system.

The work to be performed under his contract shall consist of furnishing all plant, tools, equipment, materials, supplies, and manufactured articles and furnishing all labor, transportation, and services, including fuel, power, water, and essential communications, and performing all work, or other operations required for the fulfillment of the contract in strict accordance with the contract documents. The work shall be complete, and all work, materials, and services not expressly indicated or called for in the contract documents which may be necessary for the complete and proper construction of the work in good faith shall be provided by the Contractor as though originally so indicated, at no increase in cost to the Owner.

The contract documents include the following:

Leon County invitation to bid number BC-08-24-05-68 and all addenda thereto; Project Specifications titled "Contract Documents for Killearn Lakes Units I and II Municipal Sewer Project; Plans Parts A and B prepared by PBS&J and dated June 2005; Phase I Subsurface Investigation, Killearn Lakes Sanitary Sewer Study, by EGS dated October 2004; and, City of Tallahassee Specifications for Water & Sewer Utility, dated April 1, 2002

### 2. WORK

Any work to be performed shall be upon the written request of the County Administrator or his representative, which request shall set forth the commencing date of such work and the time within which such work shall be completed.

The performance of Leon County of any of its obligations under Agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of the Agreement for the current and any future periods provided for within the bid specifications.

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**BC-08-24-05-68****3. TIME AND LIQUIDATED DAMAGES**

The work to be performed under this contract shall be commenced within fifteen (15) days of the Notice to Proceed. All work to be performed under this Contract shall be completed within two hundred seventy (270) consecutive calendar days of the Notice to Proceed. If the work to be performed under this Contract is not completed within the time set forth above, or within such extra time as may be granted by the County, the Contractor shall be deemed to be in default. For each day the Contractor is in default, the Contractor or its Surety shall pay to the County, not as a penalty, but as liquidated damages, the sum of \$500.

Permitting the Contractor to continue and finish the work or any part of it after the expiration of the contract time allowed, including extensions, if any, shall in no way act as a waiver on the part of County of the liquidated damages due under the contract.

**4. CONTRACT SUM**

The Contractor agrees that for the performance of the services as outlined above, it shall be remunerated by the County according to the payment schedules contained in the Contractor's bid proposal for a total sum of \$4,878,106.84 on completion of the work and acceptance of it as satisfactory.

**5. PAYMENTS TO THE GENERAL CONTRACTOR**

- a. **Monthly Statements** - The General Contractor shall submit to the Owner a sworn statement, along with the cost reports required, showing in detail all monies paid out, costs accumulated or cost incurred on account of the Cost of the Project during the previous period. This data shall be attached to the partial pay request form. Payment by the Owner to the General Contractor of the statement amount shall be made within twenty (20) days after approval of the Architect-Engineer and submitted to the Owner. Ten percent (10%) retainage shall be held at the discretion of the Owner, the 10% retainage may be reduced to 5% at 75% completion of the work.
- b. **Final Payment** - Final payment constituting the unpaid balance of the cost of the Project and the General Contractor's fee, shall be due and payable within 45 days after the Project is delivered to the Owner, finished and ready for beneficial occupancy, or when the Owner occupies the Project, whichever event first occurs provided that the Project be then substantially completed and this agreement substantially performed. However, if there should remain work to be completed, the General Contractor and the Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to 200% of the estimated cost of completing any unfinished work and the applicable portion of the General Contractor's retainage, provided that said unfinished items are listed separately and estimated cost of completing any unfinished items are likewise listed separately. Thereafter, Owner shall pay to General Contractor, monthly, the amount retained from each incomplete item after each of said items is completed.
- c. **Payments to Subcontractors** - The General Contractor shall promptly, but not later than 10 days after receipt of payment from the Owner, pay all the amount due subcontractors less a retain age of ten percent (10%). If there should remain items to be completed, the General Contractor and Engineer shall list those items required for completion and the General Contractor shall require the retainage of a sum equal to 200% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, The General Contractor shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and

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instruction for the Owner's operating and maintenance personnel is complete. Final payment may be made to certain select subcontractors who work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.

- d. Delayed Payments by Owner - If the Owner shall fail to pay the General Contractor within 20 days after the receipt of an approved payment request from the General Contractor, then the General Contractor may, upon fourteen (14) additional days advance written notice to the Owner and the Engineer stop the Project until payment of the Amount owing has been received, provided that the payment request has been submitted in sufficient detail to comply with the guidelines of the Office of the Clerk of the Circuit Court for Leon County. In the event that there is a dispute in the amount of the pay request, then only the disputed amount shall be held until resolved and the undisputed amount shall be paid within the time limits as stated within this paragraph. If undisputed amounts are timely paid, then the General Contractor shall not stop the Project in any fashion and the progress of the project shall not be interrupted. Both parties agree that best efforts be made to resolve the disputed amount.
- e. Payment for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site (or another location, subject to prior approval and acceptance by the Owner on each occasion).
- f. Withholding Payments to Subcontractors - The General Contractor shall not withhold payments to subcontractors if such payments have been made to the General Contractor. Should the need, as solely determined by the General Contractor, to withhold payments to subcontractors occur, for any reason, the General Contractor shall immediately return such monies to the Owner, adjusting pay requests and project bookkeeping as required.

**6. STATUS**

The contractor at all times relevant to this Agreement shall be an independent contractor and in no event shall the Contractor nor any employees or sub-contractors under it be considered to be employees of Leon County.

**7. INSURANCE**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

- 1. Minimum Limits of Insurance. Contractor shall maintain limits no less than:
  - a. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  - b. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. (Non-owned, Hired Car).
  - c. Workers' Compensation and Employers Liability: Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws and Employer's Liability with a limit of \$500,000 per accident, \$500,000 disease policy limit, \$500,000 disease each employee. Waiver of Subrogation in lieu of Additional Insured is required.

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**2. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**3. Other Insurance Provisions** The policies are to contain, or be endorsed to contain, the following provisions:

**a. General Liability and Automobile Liability Coverages** (County is to be named as Additional Insured).

1. The County, its officers, officials, employees and volunteers are to be covered as insureds as respects; liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protections afforded the County, its officers, officials, employees or volunteers.
2. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance of self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the county, its officers, officials, employees or volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claims is made or suit is brought, except with respect to the limits of the insurer's liability.

**b. All Coverages**

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County.

4. **Acceptability of Insurers.** Insurance is to be placed with insurers with a Best's rating of no less than A:VII.
5. **Verification of Coverage.** Contractor shall furnish the County with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies at any time. Certificates of Insurance acceptable to the County shall be filed with the County prior to the commencement of the work. These policies described above, and any certificates shall specifically name the County as an additional Insured and shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days prior to written notice has been given to the County.

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Cancellation clauses for each policy should read as follows: *Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the Certificate Holder named herein.*

6. Subcontractors. Contractors shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

8. LICENSES

The Contractor shall be responsible for obtaining and maintaining his city or county occupational license and any licenses required pursuant to the laws of Leon County, the City of Tallahassee, or the State of Florida. Should the Contractor, by reason of revocation, failure to renew, or any other reason, fail to maintain his license to operate, the contractor shall be in default as of the date such license is lost.

9. ASSIGNMENTS

This Agreement shall not be assigned or sublet as a whole or in part without the written consent of the County nor shall the contractor assign any monies due or to become due to him hereunder without the previous written consent of the County.

10. PAYMENT AND PERFORMANCE BOND

A Payment and Performance Bond in the amount of 100% of the estimated project cost shall be supplied by the Contractor at the time of Agreement execution. Also, a Payment and Material Bond for the Agreement amount shall be supplied by the Contractor at the same time.

Payment and Performance and Material Bonds shall provide that, in the event of non-performance on the part of the Contractor the bond can be presented for honor and acceptance at an authorized representative or institution located in Tallahassee, Florida. The Payment and Performance Bond shall be in the following form:

PUBLIC CONSTRUCTION BOND

Bond No.(enter bond number)

BY THIS BOND, We \_\_\_\_\_, as Principal and \_\_\_\_\_ a corporation, as Surety, are bound to \_\_\_\_\_, herein called Owner, in the sum of \$ \_\_\_\_\_, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated \_\_\_\_\_, between Principal and Owner for construction of \_\_\_\_\_, the contract being made a party of this bond by reference, at the time and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

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Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

DATED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
(Name of Principal)

By: \_\_\_\_\_  
(As Attorney-In-Fact)

\_\_\_\_\_  
(Name of Surety)

Payment bonds executed as a result of the requirements herein by a surety shall make reference to Section 255.05, Florida Statutes, by number and shall contain reference to the notice and time limitation provisions in Section 255.05, Florida Statutes.

**11. HOLD HARMLESS**

The Contractor agrees to indemnify and hold harmless the County from all claims, damages, liabilities, or suits of any nature whatsoever arising out of, because of, or due to the breach of this Agreement by the Contractor, its delegates, agents or employees, or due to any act or occurrence of omission or commission of the Contractor, including but not limited to costs and a reasonable attorney's fee. The County may, at its sole option, defend itself or allow the Contractor to provide the defense. The Contractor acknowledges that ten dollars (\$10.00) of the amount paid to the Contractor is sufficient consideration for the Contractor's indemnification of the County.

**12. MINORITY BUSINESS ENTERPRISE (M/WBE) PARTICIPATION**

The Contractor shall meet or exceed the 21% M/WBE participation level stated in the M/WBE Participation Statement included as part of the bid response for this project, except when the County Good Faith Committee approves an exception.

Any "Good Faith Statement" provided by a Contractor shall follow the requirements of the Florida Statutes, and must demonstrate through documentation that every reasonable effort has been made to achieve the requested percentage.

For those M/WBE firms listed in their bid, Contractors shall be responsible for securing proof of their M/WBE certification and providing copies to the County M/WBE Office.

Also required is a monthly reporting system of the work done by and payments made to certified minority business enterprises as a part of this project. The reports shall detail each invoice submitted to the County and a break down of payments to all subcontractors therein by M/WBE classification.

**13. AUDITS, RECORDS, AND RECORDS RETENTION**

The Contractor agrees:

- a. To establish and maintain books, records, and documents (including electronic storage

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media) in accordance with generally accepted accounting procedures and practices, which sufficiently and properly reflect all revenues and expenditures of funds provided by the County under this Agreement.

- b. To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of five (5) years after termination of the Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement.
- c. Upon completion or termination of the Agreement and at the request of the County, the Contractor will cooperate with the County to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in paragraph 1 above.
- d. To assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, state, or other personnel duly authorized by the County.
- e. Persons duly authorized by the County and Federal auditors, pursuant to 45 CFR, Part 92.36(l)(10), shall have full access to and the right to examine any of provider's Agreement and related records and documents, regardless of the form in which kept, at all reasonable times for as long as records are retained.
- f. To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

**14. MONITORING**

To permit persons duly authorized by the County to inspect any records, papers, documents, facilities, goods, and services of the provider which are relevant to this Agreement, and interview any clients and employees of the provider to assure the County of satisfactory performance of the terms and conditions of this Agreement.

Following such evaluation, the County will deliver to the provider a written report of its findings and will include written recommendations with regard to the provider's performance of the terms and conditions of this Agreement. The provider will correct all noted deficiencies identified by the County within the specified period of time set forth in the recommendations. The provider's failure to correct noted deficiencies may, at the sole and exclusive discretion of the County, result in any one or any combination of the following: (1) the provider being deemed in breach or default of this Agreement; (2) the withholding of payments to the provider by the County; and (3) the termination of this Agreement for cause.

**15. FINAL INSPECTION**

The Contractor shall maintain all work in first-class condition until it has been completed as a whole and been accepted by Leon County. Upon seven (7) days notice from the Contractor of completion of this project, the Director of Engineering Services will set up a semi-final inspection with the Contractor, the Chief of Construction Management, the Chief of Engineering, the Project Engineer, and himself.

If, at the semi-final inspection, all construction provided for and contemplated by the Agreement is found completed to the County's satisfaction, such inspection shall constitute the final inspection. If, however, at any semi-final inspection any work is found unsatisfactory, in whole or in part, the Contractor shall be given the necessary instructions as to the replacement of material and performance or re-performance, of work necessary and prerequisite as to final completion and acceptance, and the Contractor forthwith shall comply and execute such instructions. When all materials have been furnished, all work performed and all construction contemplated by the

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Agreement satisfactorily completed, a written notice of final acceptance will be given to the Contractor.

**16. CONSTRUCTION SITE SIGNAGE**

Contractor shall provide appropriate construction site signage to be placed at a site approved in advance by the County Project manager. Sign is to be diagramed by the vendor with approval of a proof to be made by the Project Manager prior to being ordered or erected. Signage shall meet the following specifications:

The sign will be made from a 4 ft. x 8 ft. sheet of 3/4 inch exterior grade BC plywood. The plywood shall be painted with White Enamel Gloss. The temporary sign shall be mounted on 4x4 pressure treated posts with a minimum of 2 feet of burial, and 6 feet of exposed height for maximum visibility.

Lettering shall be a non-serif block print in black type. Any logos used must have prior written consent for use of the respective entities. The sign content shall consist of the following:

- 1) Leon County project name
- 2) Leon County Seal
- 3) Names and District of each of the Leon County Board Of County Commissioner with the Chairman and Vice Chairman appropriately identified
- 4) Name of County Administrator and County Attorney
- 5) Name of Director of Public Works
- 6) Name of General Contractor with major subcontractors
- 7) Name of Engineer with consultants
- 8) Name and logo of major material manufacturers (where appropriate and approved by County)

**17. TERMINATION**

Leon County may terminate this Agreement without cause, by giving the Contractor thirty (30) days written notice of termination. The County shall not be required to give Contractor such thirty (30) day written notice if, in the opinion of the County, the Contractor is unable to perform its obligations hereunder, or if in the County's opinion, the services being provided are not satisfactory. In such case, the County may immediately terminate the Agreement by mailing a notice of termination to the Contractor.

**18. PUBLIC ENTITY CRIMES STATEMENT**

In accordance with Section 287.133, Florida Statutes, Contractor hereby certifies that to the best of his knowledge and belief neither Contractor nor his affiliates has been convicted of a public entity crime. Contractor and his affiliates shall provide the County with a completed public entity crime statement form no later than January 15 of each year this Agreement is in effect. Violation of this section by the Contractor shall be grounds for cancellation of this Agreement by Leon County.

**19. NON-WAIVER**

Failure by the County to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts; but the same shall be and remain at all times in full force and effect.

**20. REVISIONS**

In any case where, in fulfilling the requirements of this Agreement or of any guarantee, embraced in or required thereby it is necessary for the Contractor to deviate from the requirements of the bid, Contractor shall obtain the prior written consent of the County.



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21. VENUE

Venue for all actions arising under this Agreement shall lie in Leon County, Florida.

22. CONSTRUCTION

The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida.

WHERETO, the parties have set their hands and seals effective the date whereon the last party executives this Agreement.

**CONTRACTOR**

WITNESS: \_\_\_\_\_ BY: \_\_\_\_\_  
President

WITNESS: \_\_\_\_\_ DATE \_\_\_\_\_

**(CORPORATE SEAL)**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_, of \_\_\_\_\_  
(Name of officer or agent, title of officer or agent) (Name of corporation acknowledging)

a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally  
(State or place of incorporation)

known to me or has produced \_\_\_\_\_ as identification.  
(type of identification)

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Print, Type or Stamp Name of Notary

\_\_\_\_\_  
Title or Rank

\_\_\_\_\_  
Serial Number, If Any

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**LEON COUNTY, FLORIDA**

BY: \_\_\_\_\_  
Cliff Thael, Chairman  
Board of County Commissioners

DATE: \_\_\_\_\_

ATTEST:  
BOB INZER, CLERK OF THE COURT  
LEON COUNTY, FLORIDA

By: \_\_\_\_\_

APPROVED AS TO FORM:  
LEON COUNTY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
Herbert W.A. Thiele, Esq.  
County Attorney